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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

AUG 18 1995

Karen Carey
Womble, Carlyle, Sandridge & Rice
1600 Southern National Financial Center
Winston Salem, NC 27101

Re: Consent Decree - Buckingham

Dear Karen:

Thank you for your fax of August 11 in which you propose certain language so as to incorporate the County into the Consent Decree by providing "in-kind services" provisions. I have certain questions about this language which I hope we can discuss when we meet on August 23.

My most significant concern with the proposed language is the vagueness with which the County's responsibilities are specified in new Paragraph V.F. Items 1, 2 and 5 all require the County to "assist" in the implementation of the specified tasks. How do you propose we clarify more specifically the level of assistance which will be provided by the County? Who is responsible if the task in question does not get done? For example, if the County is to assist in the posting of the required signs (V.F.2) and stops after only one sign, the County has assisted in this matter but not, perhaps, to the degree anticipated by the other parties. If the remaining signs do not get put up, who does EPA come after for stipulated penalties? Not only does the use of the word "assist" in the proposed language help shield the County from stipulated penalties, it theoretically provides the other parties with a defense to an allegation of failure to perform by allowing them to argue that the county was supposed to perform that specific task.

To cure the above problem, I would recommend that the Decree clarify that Thomasville and Prillaman are ultimately responsible to the United States for any requirement in which the County is to "assist" or otherwise perform work pursuant to Paragraph V.F. However, I would suggest that a work-sharing agreement between the County, Thomasville and Prillaman be attached to the Consent Decree to allow the parties to seek judicial relief in the event that any of the parties does not fulfill its portion of the work it is required to do under Paragraph V.F.

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Other Sections of the Consent decree that should be applicable to the County include:

- I. Background;
- II. Jurisdiction;
- III. Parties Bound;
- IV. Definitions;
- V. A and C - General Provisions;
- V. B only for the reference that the work will be done in accordance with the NCP;
- X. Quality Assurance - this is especially important in that the County is to assist with groundwater monitoring and sample shipping. I assume that the other parties can be solely responsible for the requirements concerning labs under paragraph X.C, but the County's role in sample collection and sample forwarding to the lab will have to be clarified before the County can be released from this requirement;
- XI. Access;
- XXIX. Effective date;
- XXX. Retention of Jurisdiction; and
- XXXI. Appendix.

In addition, I assume that Thomasville and Prillaman will take over the reporting requirements for any work the County does pursuant to the decree (Section XII) and that Dispute Resolution (Section XXI) is not something the County believes is necessary for it under the terms of the Decree. However, if there is some kind of work-sharing or cost-sharing attachment to the Consent Decree, the County might wish to be able to avail itself of such a mechanism in the event it has a dispute with the other Settling Defendants over the various functions and assistance the County is required to render under the terms of such an attachment to the Decree.

I look forward to our meeting on the 23d.

Sincerely,



Jim Heenehan
Sr. Asst. Reg. Counsel

cc: M. Whittington (3HW41)
A. Palestini (3HW41)
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K. Schmidt

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